

c/w
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 26 2005 ★

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Leon Blue,

Plaintiff-Petitioner,

-against-

United States of America,

Defendants-Respondents.
-----X

P.M. _____
TIME A.M. _____

NOT FOR PUBLICATION

ORDER

00-CV-4338 (CBA)(SMG)

AMON, UNITED STATES DISTRICT JUDGE:

Petitioner brings this motion pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure seeking relief from this Court's December 22, 2003 Memorandum and Order denying his motion under 28 U.S.C. § 2255 to vacate his judgment and sentence. Petitioner argues that this Court relied on admissions made in his first, withdrawn guilty plea and ambiguous statements in his second guilty plea. Specifically, Petitioner argues that, although he pled guilty to possession of "crack cocaine" in his first, withdrawn plea, he pled guilty only to possessing "cocaine" or "cocaine base" in his second. Accordingly, Petitioner argues, it was improper to sentence him under the crack cocaine guidelines. Petitioner further argues that his counsel was ineffective in failing to challenge the factual basis of the crack cocaine sentence.

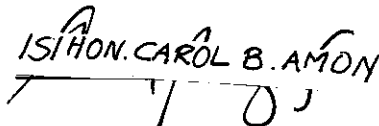
Where a Rule 60(b) motion merely poses the same arguments raised in the prior § 2255 petition, the motion is appropriately denied. See, e.g., Rodriguez v. United States, No. 97-2545, 2005 U.S. Dist. LEXIS 6592 at *25 (S.D.N.Y. April 14, 2005) (where the arguments raised in the motion for relief under Rule 60(b)(6) were "essentially the same arguments that [petitioner] raised in his § 2255 petition," the court "decline[d] to address them once again" and denied the

motion.”).

Petitioner’s arguments are the same as those made in his § 2255 petition and rejected by this Court. The Court of Appeals denied a Certificate of Appealability on appeal of that Order. Accordingly, his motion for relief under Rule 60(b)(6) is denied. Petitioner has also failed to make a substantial showing of the denial of a constitutional right and so a Certificate of Appealability will not be issued. See 28 U.S.C. § 2253(c)(2); Kellogg v. Strack, 269 F.3d 100, 103 (2d Cir. 2001).

SO ORDERED.

Dated: Brooklyn, New York
October 10, 2005


Carol Bagley Amon
United States District Judge